Friday Canning Corporation *and* General Drivers and Helpers Local Union No. 662, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 18-CA-6343

March 26, 1981

DECISION AND ORDER

On August 20, 1980, Administrative Law Judge James L. Rose issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, cross-exceptions, and a supporting brief, and Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions[1] and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as modified below, and to adopt his recommended Order,[2] as so modified.

We find in agreement with the Administrative Law Judge that Respondent threatened employees with termination should they continue to engage in a concerted work stoppage and did terminate them in violation of Section 8(a)(1) of the Act. We disagree, however, with the Administrative Law Judge's finding that Respondent did not engage in unlawful surveillance of the employees' activities in violation of Section 8(a)(1).

The relevant facts are as follows:

The Union sought to organize the migrant employees, and in late July 1979 Armando Hernandez, a union organizer, was granted permission by Respondent to talk to the migrants at their camp barracks located on Respondent's property. Roberto Gonzales, an agent of Respondent,[3] came into the barracks on both occasions when the union organizer attempted to speak to the migrants.

The Administrative Law Judge did not find that Gonzales was engaged in surveillance within the meaning of Section 8(a)(1). He found that, at all crucial times, Gonzales was where he had the right to be and where he was on other days. The Administrative Law Judge stated that, if the Union chose to engage in union activities at the Employer's premises, the Union should have no cause to complain that management observed them.

We disagree. The facts reveal that Respondent permitted the union organizer to speak to the migrants in the barracks and then purposely had its agent, Gonzales, present during the conversations. Respondent provided no explanation for Gonzales' presence in the barracks on those two particular occasions when the union organizer spoke to the migrants. Indeed, Respondent's vice president, Winston Bash, admitted that he told Gonzales to keep management informed as to the organizing activities in the barracks.

Accordingly, we conclude that the migrant employees were unable to exercise fully and freely their Section 7 rights of self-organization while Respondent's agent was present during the meetings with the union organizer. The Union had no alternative access to the migrant employees for the purpose of meeting with them concerning their organizational rights except in their living quarters on Respondent's premises with Respondent's permission. Gonzales' presence had a twofold purpose of surveying the union activities of the employees and conveying to the employees the impression that they were being watched.[4] On the basis of the foregoing, we find that Respondent engaged in unlawful surveillance in violation of Section 8(a)(1).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Friday Canning Corporation, New Richmond, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:[5]

1. Insert the following as paragraph 1(d):

"(d) Engaging in unlawful surveillance of employees' union activities."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] Respondent contends that it suffered economic loss by operating the migrant labor camp and there is substantial justification for not reopening the camp on the same terms and conditions that it operated in 1979. It contends that the cookhouse and trailer have been torn down and the fixtures and furniture from the barracks have been sold. Respondent's contentions may be raised as an affirmative defense in the compliance proceeding.

[3] Gonzales recruited the migrants in Texas and had final authority over who was hired. He cosigned with Respondent's vice president the employment contract executed with each individual migrant employee. Gonzales served as "crew leader" for the migrants at the cannery, taking care of both the barracks and commissary of the migrant camp. His wife was the cook. Gonzales also acted as the migrants' interpreter and generally helped them with their personal and work-related problems.

[4] In fact, Gonzales' presence had its intended inhibiting effect.

[5] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge, threaten with discharge, or otherwise discriminate against our employees because they engage in concerted activity protected by the National Labor Relations Act.

WE WILL NOT engage in unlawful surveillance of our employees' union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL offer immediate reinstatement to all the migrant employees discharged on August 6, 1979, and make them whole for any losses they suffered with interest, and WE WILL reopen and make available to them the migrant labor camp.

All of our employees are free to join or assist any labor organization of their own choosing or refrain from any such activity.

FRIDAY CANNING CORPORATION

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: This matter was heard before me on April 3, 1980, at Minneapolis, Minnesota, upon the General Counsel's complaint which alleged principally that on August 6, 1979,[1] the Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.*, by discharging certain unnamed employees who were engaged in a work stoppage protected by Section 7 of the Act. It is also alleged that the Respondent engaged in surveillance of employees' union activities and threatened employees with discharge, both in violation of Section 8(a)(1).

The Respondent denied the substantive allegations of the complaint and affirmatively contends that the employees in question were not discharged but voluntarily quit their employment on August 6.

[1] All dates are in 1979 unless otherwise indicated.

Upon the record as a whole, including my observation of the witnesses, briefs and arguments of counsel, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

The Respondent is a Wisconsin corporation engaged in the processing and canning of fresh vegetables at 12 facilities including the one involved in this matter at New Richmond, Wisconsin. In the course of its operations at the New Richmond facility, the Respondent annually ships goods, products, and materials valued in excess of $50,000 directly to points outside the State of Wisconsin. The Respondent admits, and I find, that at all times material it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Charging Party, General Drivers and Helpers Local Union 662, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (herein called the Union), is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The Respondent cans peas, corn, green beans, carrots, and potatoes which are grown in the area around the New Richmond plant. It has about 75 full-time employees, of whom about 30 are clericals. In mid-June each year, with the pea crop, the Respondent begins hiring seasonal employees. As the canning season progresses, the complement of seasonal employees reaches about 200 to 225. In October it begins to level off and then drops.

The seasonal employees include both migrants, who are hired from Texas and Mexico, and people who live in the immediate locality. The corps of migrant employees in 1979 was 47, about 85 to 90 percent of whom return year after year. They are, however, hired on a yearly contract supervised through the Wisconsin Department of Industry, Labor and Human Relations (DILHR).

For several years, the Respondent's principal contact in hiring migrant employees has been Roberto Gonzalez, though the Texas Migrant Council Recruiting Service is also a source of employees. In the spring each year, the Respondent advises Gonzalez how many migrants will be needed, and in some cases he is told not to rehire a particular individual deemed not satisfactory. Otherwise, Gonzalez is given a free hand in contacting potential employees and offering them a written employment contract. The contracts, signed by each of the migrants as well as the Respondent, set a minimum hourly wage to be paid (in 1979 from $2.90 per hour to $3.10 per hour depending on the job). The contracts provide for company-furnished housing at no charge; and commissary meals to be furnished 7 days a week at a cost to the em-

ployee of $4 per day deducted from earnings. Finally, upon successful completion of the season, the employee is to receive the cost of a one-way bus ticket from McAllen, Texas, to New Richmond. Winston Bash, the Respondent's vice president and production manager, testified that in practice the migrant employees are furnished transportation or given the equivalent of the one-way bus fare at the beginning of the season which is deducted from their pay and then, upon completion of the season, that amount is reimbursed to them.

Gonzalez not only recruits the migrants, he serves as their "crew leader." He also comes to New Richmond for the canning season, however, not to work in the cannery, but to take care of the migrant camp—the barrack and commissary. His wife is the cook.

The barrack is World War II vintage about 40 by 200 feet located on the Respondent's premises. Adjoining the barrack is a trailer and a kitchen building.

Gonzalez also acts as an interpreter for the migrants, most of whom speak only limited English, and he generally helps them with their personal and work-related problems. But he has no authority over any of the employees in connection with their production work nor does he himself engage in any production activity.

In late July, Armando Hernandez, a bilingual organizer of the Union, began an effort to organize the migrant employees of the Respondent. In connection with this it is alleged that the Respondent, through Gonzalez, engaged in surveillance of employees' union activity. There is, however, no evidence in the record that the events of August 6 were in any way connected with the Union's attempt to organize the migrant employees.

While there are some minor differences in the precise words used, the parties are in general agreement concerning the events of August 6 and their timing.[2]

While a few of the migrants worked just the evening, or cleanup, shift, most worked the dayshift and took their lunch period between noon and 12:30 p.m. Thus on August 6 at the lunchbreak word was spread among the migrants that they were going to demand a wage increase to $4 per hour—up from an average of about $3.29.[3] Bash met with Gonzalez and one migrant about this then had a discussion at the barrack with all, or most, of them. Gonzalez was the interpreter, although present were two investigators of the Wisconsin DILHR who apparently spoke from time to time.[4]

The essence of the first discussion was that Bash could not agree to give them a wage increase and stated that he would take the matter up with Mr. Friday. He then left and returned in about 10 minutes and said the Company would give them a 30-cent-per-hour bonus (10 cents per hour for each season segment an employee successfully completed). This apparently was interpreted by Gonzalez to be an agreement that the Company would give an across-the-board 30-cent-per-hour raise; thus they all returned to work. It was then pointed out that Gonzalez had misinterpreted what Bash had said and that the Company agreed only to a 30-cent-per-hour bonus. Apparently fearful that they would not actually get the bonus, all the migrants left work and returned to the barrack.

There ensued a second meeting. Bash was eager for the employees to return to work because, as he credibly and undeniably testified, peas were ripe and they must be picked and canned within 24 hours lest their quality deteriorate substantially.[5] The employees stated their unwillingness to work for less than an additional 30 cents per hour.

Thus, according to Bash, at or about 1 or 1:15 he said, "It's time to get back to work. Let's get back to work." But they would not do so, and then Bash told them, "If they were not going to work, then we would close the camp. We would not provide camp services."

Later in the afternoon, according to the General Counsel's witness Jose Guadelupe Reyes:

> Mr. Winston [Bash] came back and Wayne was with him they both asked us if we wanted to come back to work. And then we replied that if we got the 30 cents—an hour increase, we would. However, we would not go along with the bonus. Robert Gonzalez walked by and not he but the others that were there said, "Look we want our checks," all at once, "right now."

They told the company officials they would not return to work because they were not going to get the 30-cent-per-hour increase.

Finally Bash told them it would take a while to process the checks and they would probably not be ready until 5 or 6 p.m. Then according to Reyes, "And we said as soon as we got our checks, we would leave. Then Mr. Winston was there and he said the checks will be ready around 5 or 6 o'clock, 'at which time you should leave because we're going to close the camp.'" Bash's version of this meeting, recorded by him at or about the time, is substantially in accord:

> After a considerable amount of time, approximately 2 p.m., Wayne Sias [the plant superintendent] and I again went down to camp and through the interpretation of Reyes told the fellows again that we wanted to, if they wanted to work, they should immediately go to work. If not, they should leave the premises and we would not keep the camp available for those that are not working. Reyes indicated that they were all going to stick together after discussing it a bit and that none of them were going to work and that they were all going to leave. At that time I indicated the camp would be closed at about 6 o'clock, and that they should all be gone.

The Respondent argues that the employees asked for their checks prior to Bash telling them that, if they did

[2] All of the employee witnesses testified through an interpreter which may explain the slight variances.

[3] The average nonmigrant seasonal wage was $3.13 per hour.

[4] Hernandez was on the grounds but not invited to any of the meetings, and it was he, apparently, who arranged for the investigators to be there. There is no indication, however, that these three played any more than an observer role, except for occasional interpretation.

[5] Bash testified that the Company in fact lost 131 acres of peas representing about $83,390.

not return to work, he would close the camp. Hence, argues the Respondent, the employees quit. I find, however, that this was Bash's third meeting with the employees. At the second as well, an hour or so before, he told them that the camp would be closed if they did not return to work.

The employees did in fact receive their checks about 5 or 6 p.m. and did leave. Gonzalez cleaned up, gave the keys to Bash about 7 p.m., and he too left. The camp was closed.

The following day a half dozen or so migrants returned to the Company and asked for their jobs. Though they were reemployed, they were advised that the camp would not be reopened and they would have to provide their own board and room. New contracts of employment were written along those lines.

Another group of migrants, including Reyes, returned 2 days later, but were told by Bash that they had been replaced (although the Respondent continued to run ads on the local radio for seasonal employees) and they were not rehired. There is no evidence that any of the remaining migrant employees sought to return to work during the 1979 canning season.

B. *Analysis and Concluding Findings*

1. The August 6 terminations

The General Counsel contends that when Bash told the migrants that unless they returned to work he would close the camp such was a threat to discharge them for engaging in activity protected by Section 7 of the Act; and, when the Respondent in fact closed the camp on the evening of August 6, such was tantamount to discharging employees because they engaged in activity protected by Section 7.

The Respondent contends that on August 6 the migrants quit their employment because the Respondent would not accede to their demand for a 30-cent-per-hour across-the-board increase; and, even if they were considered economic strikers, the Respondent was privileged to tell them to leave the Company's premises. Further, if it were a strike, the Respondent was not required to subsidize it by continuing operation of the camp, particularly where the Respondent was operating the camp at a loss. Similarly, the Respondent contends that, when the six employees were rehired on August 7, it was not economically feasible to reopen the camp for such a small number of employees. Thus it was justified in rehiring these employees without that benefit.

Though the tendency in these matters is to give excess weight to which words were used when analyzing the nature of an event, the acts of the parties are a more precise indicator of what actually transpired. This is particularly true where the testimony is in a language other than English and the English version is a literal translation. Thus here, the word "strike" was never used, yet that is precisely what occurred when the employees left work on August 6. They had earlier said they would not work unless they received a wage increase. They were told, so they thought, that the Company would give them the increase and they returned to work. But they discovered that what the Company had offered and what they had demanded were two different things. They then left their jobs and returned to the barrack. At this time, I conclude, the employees were engaged in a strike.

The Respondent argues that by saying they would not work because the wage increase was refused the employees in effect stated they quit. Clearly such cannot be a proper interpretation lest the concept of a strike be abrogated. Every time employees engage in an economic strike they are telling their employer that they will not work. Indeed they do not work unless and until some event occurs. Nevertheless, they retain their status as employees.

While striking employees may be permanently replaced, even those involved in a spontaneous work stoppage such as this, they may not be discharged or led to believe they were. *Ridgeway Trucking Company*, 243 NLRB 1048 (1979).

When Bash told employees during his second meeting with them that, unless they returned to work, the camp would be closed was a clear threat of discharge under these circumstances. He did not simply tell strikers they must leave the premises, which is generally an employer's right. Here the barrack was the employees' home and to exclude them from it was tantamount to excluding them from the New Richmond area. After all, these were primarily non-English speaking migrant employees who had at best a limited capacity to arrange for rooms apart from the barrack. Bash gave them two choices: (1) return to work for the wages offered by the Respondent; or (2) return to Texas or Mexico. Work or be terminated. The middle ground of a strike was not an option.

No doubt that during a strike a company need not pay wages or provide other fringe benefits to the nonworking employees. E.g., *Kansas City Power & Light Company*, 244 NLRB 620 (1979). But here to exclude employees from the camp effectively severed the indicia of continued employment to which strikers are entitled.

While the Respondent did offer some evidence suggesting that the cost of running the camp exceeded the revenues received from employees by nearly $20,000 a year, there is no showing that had the Respondent allowed the employees at least to stay in the barrack it would have incurred any expense at all. The primary cost of camp, other than the food, were the salaries of Gonzalez and his wife. And in any event, furnishing of food at a cost of $4 per day could easily have been separated from allowing the employees to continue to stay at the camp. The Respondent did not have to close both the commissary and the barrack.

To live in the barrack for free was part of each employees' contract and amounted to a substantial fringe benefit. However, there does not appear to have been an equivalent cost to the Respondent. In short, the Respondent did not establish an economic justification for closing the camp which would weigh against the employees' right to strike—and stay in the New Richmond area. Lest the right to strike in a situation such as this be diminished to the point of nonexistence, the employees' right to discontinue working while retaining the indicia of employment must balance against Respondent's right to have nonworking employees off of its premises. It

should be noted that the barrack was away from the production area and, in allowing the employees to stay in the barrack, the Respondent would not have been subjected to their interfering with the production process. Nor would the Respondent need have allowed any of them in the production area during the course of the strike.

If, as they did later in the afternoon of August 6, the employees had said initially they wanted their checks and were going to leave, then such might be construed as a voluntary quit as opposed to engaging in an economic strike. However, they did not ask for the checks until substantially after Bash told them that unless they returned to work he would close the camp. Thus the migrants never had the opportunity to choose between striking for higher wages and quitting. They were told in advance either they would return to work for the wages the Company offered, or they would, in effect, be terminated.

This conclusion is substantially corroborated in Bash's investigatory affidavit, undenied and unexplained, wherein he stated: "I did not use the word 'fired' or 'discharged' in my discussion with the workers but it is fair to say that by closing the camp, this was our intent to dismiss the workers, that they were not going to work at the wage we had offered."

In addition, when employees engage in protected, concerted activity, the burden of any ambiguity concerning their continued status as employees is on the employer. Thus, here, the Respondent had the affirmative duty to tell the employees that they were not being discharged and would continue to be treated as employees until permanently replaced. *Ridgeway Trucking Company, supra.*

To demonstrate further that the Respondent intended to discharge the migrant employees unless they returned to work on precisely the Respondent's terms is the fact that on August 9 several migrants asked for their jobs back but were denied reinstatement on grounds that they had been permanently replaced. While it may be, as Bash testified, the bodies had been replaced, given the nature of the Respondent's business, there is a large turnover of employees. The Respondent is more or less continuously hiring people to do the type of work the migrants had been doing. Thus on August 10 and 17 the Respondent ran radio ads which offered immediate employment for seasonal jobs.[6]

It is noted that, when six employees did return to work on August 7, they were denied the opportunity to stay in the barrack. Such a change in compensation was inherently discriminatory and put on the Respondent the burden of justification. *N.L.R.B.* v. *Great Dane Trailers, Inc.*, 388 U.S. 26 (1967). While it may be the Respondent did show a business justification for not opening the commissary for only six employees, the Respondent did not in any way establish a reason for denying them a place to stay. Absent some proof in this respect, I conclude that, by denying the employees an integral part of their original employment contract, the Respondent discriminated against them because they engaged in activity protected by the Act. Rather than being inconsistent with a conclusion that the migrants were discharged, as argued by the Respondent, such discrimination tends to prove they were.

Accordingly, I conclude that on August 6 Bash threatened employees with termination should they continue to engage in a concerted work stoppage and ultimately did terminate them in violation of Section 8(a)(1) of the Act.

2. The alleged surveillance

Occurring at or about the same time, but as far as this record indicates, unrelated to the events of August 6, the Union sought to organize the migrant employees. Though there is some question as to the precise date, in late July Hernandez came to the plant and was granted permission to talk to the migrants at the camp. The first time he went to the kitchen trailer and told Gonzalez who he was. Gonzalez acknowledged Hernandez' presence by shaking his head. Hernandez then proceeded to pass out authorization cards to employees. The next day he returned about noon. As he was discussing the Union with employees, Gonzalez came into the barrack, sat down, and began watching TV. The following Sunday Hernandez returned to the barrack, again talked to employees about the Union, and again Gonzalez came in and, according to Hernandez, "as soon as Robert Gonzalez walked in, nothing else was said."

Though Bash testified he did not ask Gonzalez to survey the employees' union activity, he did ask Gonzalez to keep him posted on what was going on.

The General Counsel contends that when Gonzalez came into the barrack area on July 19 and July 22, inasmuch as he was an agent of the Respondent, the Respondent thereby engaged in surveillance of employees' union activity.

The record is clear that Gonzalez was in fact an agent of the Respondent. On behalf of the Respondent he hired all of the migrant employees and was himself employed by the Respondent to look after the camp. However, I do not believe he was engaged in surveillance within the meaning of Section 8(a)(1) of the Act. At all times on July 19 and 22 he was where he had the right to be and where he was on other days—in the barrack from time-to-time watching television.

The Board has long held, "Union representatives and employees who choose to engage in their union activities at the employer's premises should have no cause to complain that management observes them." *Milco, Inc., et al.*, 159 NLRB 812, 814 (1966); *Chemtronics, Inc.*, 236 NLRB 178 (1978).

If Hernandez, as the union organizer, had not wanted the Respondent's agent to observe his organizing efforts among the migrant employees, he certainly could have asked those employees to accompany him to some place away from the barrack. He did not. Nor is there any indication that Hernandez ever asked Gonzalez to leave the barrack.

[6] There is also undenied testimony that Friday, apparently the president or chief operating officer of the Respondent, suggested that he did not want to hire any more "Mexicans." The implications of this, however, need not be considered inasmuch as I have concluded that, at the beginning, the Respondent unlawfully discharged the migrant employees for having engaged in activity protected by the Act.

On these facts I cannot conclude Respondent violated Section 8(a)(1) of the Act and I will recommend the complaint in this respect be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices found above, occurring in connection with the Respondent's operation of its New Richmond, Wisconsin, facility, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Though mindful that the migrants had 1-year contracts of employment, they nevertheless were seasonal employees who had a reasonable expectation of rehire in 1980 and following seasons. According to Bash, 85 to 90 percent of them returned each year. Accordingly, they are entitled to reinstatement. *Solboro Knitting Mills, Inc.*, 227 NLRB 738 (1977).

Thus, I recommend that the Respondent be ordered to offer reinstatement to all the migrant employees who were discharged on August 6 to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions of employment under the terms and conditions of their employment contract of 1979; and make them whole for all wages and other losses they may have suffered as a result of the discrimination against them through the end of the 1979 canning season, and each succeeding season until they are offered reinstatement, *Abilities and Goodwill, Inc.*, 241 NLRB 27 (1979), pursuant to the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided for in *Florida Steel Corporation*, 231 NLRB 651 (1977).[7] In addition, as to those employees who were reinstated on August 7, but who were not allowed to live in the barrack, I shall recommend that the Respondent be ordered to make them whole for whatever expenses they incurred as a result of having to provide their own lodging away from the Respondent's premises.

The Respondent contends that it suffered economic loss by operating the migrant labor camp and has now concluded not to reopen the camp because it can make do with local employees. Cost is not a sufficient reason to deny a full remedy. Here an offer to reinstate the migrants without also providing the camp would be illusory. Further, employer-furnished housing is a working condition and a mandatory subject of bargaining, *Granite Ball Groves, a Joint Venture, et al.*, 240 NLRB 1173 (1979). Thus returning to the *status quo ante* the unfair labor practices require the Respondent to reopen the labor camp on the same terms and conditions that it operated in 1979. I note that the Respondent had no intention of closing the camp following the 1979 season and did not determine to do so until following its unlawful discharge of employees on August 6. Finally, whatever losses may be incurred as a result of Respondent's having to reopen and rehire the migrant employees was occasioned by the Respondent's unfair labor practices.

Upon the foregoing findings of fact, conclusions of law, the entire record in this matter, and pursuant to provisions of Section 10(c) of the Act, I hereby make the following recommended:

ORDER[8]

The Respondent, Friday Canning Corporation, New Richmond, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge should they engage in a concerted work stoppage protected by Section 7 of the Act.

(b) Discharging or otherwise discriminating against employees because they engage in concerted activity protected by Section 7 of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.[9]

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act:

(a) Offer immediate reinstatement or a contract for employment for the next canning season, whichever is appropriate, to each of the migrant employees discharged on August 6, 1979, to his former position of employment or, if that job no longer exists, to a substantially equivalent position of employment under the same terms and conditions as the employment contract of 1979 with applicable wage increases, if any.

(b) Make whole all employees discharged on August 6 for any loss of wages or other benefits that may have occurred as a result of the discrimination against them in a manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its premises in New Richmond, Wisconsin, copies of the attached notice marked "Appendix."[10]

[7] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[9] Though the discharges here were numerous, there is no real indication of a proclivity on the Respondent's part to violate the Act or otherwise engage in widespread misconduct. Accordingly, the narrow injunctive language is appropriate. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursu-

Continued

Copies of the notice, on forms provided by the Regional Director for Region 18, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the allegations in the complaint not specifically found herein are dismissed.

ant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."